CA 108 (1) (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

WRIT PETITION NO. 3198 **/2004**

PETITIONERS

1. Shivam Tractors,
   Through its proprietor
   Surendra Patel,
   S/o. Girdhari Patel

2. Surendra Patel,
   S/o. Girdhari Patel,
   Aged about 45 years,
   Prop. of Shivam Tractors

3. Girdhari Patel,
   S/o. Late Nityanand Patel,
   Aged about 70 years,
   Director, Shivam Tractors

All 3 R/o. Shivam Tractors,
Jagatpur, Gharghoda Road,
Raigarh Tahsil,
District Raigarh (C.G.)

P.R. No. 3198/04
Presented by Shri Ishwar Rathi
dated 10-9-04

V E R S U S

RESPONDENT

Amar Agrawal,
S/o. Shri Jaganlal Agrawal,
Aged about 29 years,
Occupation – business,
R/o. Pathalgaon,
Dist. Jashpurnagar (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

DPK

29
30

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.3198 of 2004

Shivam Tractors and others

Vs.

Amar Agrawal

O R D E R

Post for 12.05.2005

Sd/-
Sunil Kumar Sinha
Judge

11.05.2005

Noted
Sanjay Agrawal
Adv.
12/5/05

Noted
seen
Adv.
12.5.05

APR

31

30

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.3198 of 2004

Shivam Tractors and others

Vs.

Amar Agrawal

Shri Ashish Gupta, counsel for the petitioners.
Shri Sanjay Agrawal, counsel for the respondent

ORDER
(12.05.2005)

Sunil Kumar Sinha, J,

By this writ petition filed under Article 227 of the Constitution of India, the petitioners,who are the defendants, have challenged the legality and validity of the impugned orders dated 24.2.2004 (Annexure P-5) and 26.8.2004 (Annexure P-6) passed in Civil Suit No.3-B/2004 by which an application filed under Order VII Rule 10 read with section 151 of CPC and the application filed under Order VI Rule 17 of CPC have been dismissed by the trial Court.

(2) The facts of the case are that the plaintiff who is a resident of Tahsil Pathalgaon, now district Jashpur (C.G) filed a suit for recovery of a sum of Rs.1,34,000/- alongwith interest against the defendants. According to the plaint allegations, the defendants proposed for taking sub-dealership of the Tractor Agency and the plaintiff agreed for the same. The talks about

(32)

(31)

the proposal and acceptance between them were held in Pathalgaon and the terms and conditions were settled. It was settled that a sum of Rs.1 lakh shall be deposited by the plaintiff with the defendants and the plaintiff agreed to this offer and assured for sending the said amount. Thereafter, the plaintiff got prepared a bank draft of the said amount at Central Bank of India, Pathalgaon and the same was received by the defendants on 16.6.1998 at Raigarh. Acknowledgement of the draft was also issued and it was again assured that the formalities regarding sub-dealership shall be concluded very soon. After receiving of the said amount since the sub-dealership was not given and the amount was also not returned, the plaintiff filed the suit for the aforesaid reliefs on 21.4.2001 in District Court, Raigarh, Distt. Raigarh (C.G).

(3) It is important to mention this fact here that on the date of filing of the suit, Tahsil Pathalgaon was in Raigarh District. However, when the Jashpur District was constituted on 02.10.2003 this Tahsil Pathalgaon came in jurisdiction of Jashpur District and the matters pertaining to Jashpur District were transferred from District Court Raigarh to District Court Jashpur under certain order of the District & Sessions Judge, Raigarh.

(4) The written statement in the matter was filed on 01.9.2003. After transfer of the matter to the District Court Jashpur, the defendants filed an application under Order VII

33

32

Rule 10 read with section 151 CPC saying that since the cause of action for filing the suit arose in Raigarh, as according to the plaintiff the receipt of the draft was given by the defendants at Raigarh on 16.6.1998, therefore, as per the provisions of section 20 of CPC the District Court Raigarh alone will have jurisdiction to entertain this suit. Therefore the suit should be returned back to the plaintiff for presentation to the proper court or it should be dismissed for want of jurisdiction. This application has been dismissed by the impugned order dated 24.2.2004, the validity of which has been challenged by the defendants.

(5) The provisions in relation to the return of the plaint are very clear. It is provided that subject to the provisions of Rule 10A, the plaint shall at any stage of the suit be returned to be presented to the court in which it should have been instituted. It has been provided by explanation to subsection (1) that even a Court of appeal or a revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule. Sub-rule 2 makes a procedure on return of plaint and it has been provided that on returning a plaint, the judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it. Rule 10A gives power to the Court to fix a date of appearance in the court where the plaint is to be filed after its return.

(34)

(33)

(6) After perusal of the provisions of Sub-rule 10 of Order VII it becomes clear that a court cannot return a plaint unless it comes to a definite finding that the suit should have been instituted in another Court. The plaint is returnable only where the finding about want of jurisdiction is based on the plaint allegations itself. But where the finding has been arrived at after contest and on the true state of facts alleged and established by the defendant, the suit should be dismissed in its entirety.

(7) In the present case, the plaint allegations are that the talks in relation to sub-dealership had taken place in Pathalgaon and the offer of the defendants was accepted there. These facts have been disputed by the defendants in their written statement. On the basis of plaint allegations, a cause of action for institution of the suit, prior to the formation of the new district of Jashpur, has arisen within the territorial jurisdiction of Raigarh District Court, therefore, the suit was instituted at Raigarh. However, when the Tahsil Pathalgaon was included in Jashpur District the matter was transferred to Jashpur District Court on the basis of cause of action being arisen within the territorial limits of this District.

(8) In these facts and circumstances of the case, this plaint was not liable to be returned for presentation to the proper Court under Order VII Rule 10 of the CPC as according to the plaint allegations a part of cause of action arose at

Pathalgaon which now falls within the territorial jurisdiction of Jashpur district and in the opinion of this Court, the trial Court committed no error of law in rejecting this application filed by the defendants.

(9) Another application under Order VI Rule 17 of the CPC was filed by the defendants on 26.8.2004. By this application, the defendants sought amendment in the pleadings in relation to the jurisdiction of the Court at Jashpur Nagar. The defendants wanted to add that in fact the entire transaction took place at Raigarh and therefore, the district court at Raigarh would alone have jurisdiction to entertain the present suit and the suit has wrongly been transferred to the district Court, Jashpurnagar only on the ground that the plaintiff is a resident of Pathalgaon which has now been included in Jashpur District. As a matter of fact, the defendants after formation of the new district of Jashpur Nagar and after transfer of this suit to District Court, Jashpur had prayed for incorporation of amendment challenging the jurisdiction of Jashpur Court on the basis of entire cause of action being arisen in the territorial jurisdiction of Raigarh District. This application has been dismissed by the trial Court, vide impugned order dated 26.8.2004 only on the ground that an application pertaining to return of plaint on the basis of lack of territorial jurisdiction under Order VII Rule 10 CPC has been dismissed earlier, therefore, an amendment challenging the jurisdiction of the Court cannot be allowed

subsequently. In the opinion of this Court, the aforesaid order passed by the trial Court is not in accordance with law.

(10) It is settled principle of law that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. This is the main provision given under Rule 17 of Order VI C.P.C. A proviso has also been added to this rule that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial.

(11) The main provision of Rule 17 of Order VI as well as the proviso to the aforesaid rule make it clear that normally the amendments sought before the commencement of trial are to be allowed and subsequently it may also be allowed if it appears on record that the party who could have raised the matter before the commencement of the trial has failed to do so inspite of due diligence. The words used by the Legislature clearly indicate that an amendment based upon subsequent event is never prohibited because admittedly, the same being the subsequent event could not be raised before the commencement of the trial.

37

36

(12) While dealing with the matter of ***Pankajaand another –vs- Yellappa (dead) by LRs. & others reported in (2004) 6 SCC 415*** the Apex Court held that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no strait-jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual back ground of the case.

(13) If we examine the present matter it shall appear that after formation of the new district of Jashpur and after transfer of the case to the District Court Jashpur, the defendants want to incorporate the amendment raising plea that the entire cause of action has arisen in territorial jurisdiction of the present Raigarh District, therefore, the district Court Jashpur will have no jurisdiction to entertain the suit. Previously the defendants have denied about any transaction being taken place at Pathalgaon and according to them the entire transaction had taken place in Raigarh, and at that time Pathalgaon was also included within the territorial jurisdiction of the Raigarh Court, therefore, no such plea about the challenge of jurisdiction was either required to be raised or raised by the defendants. Now after a subsequent event has taken place, and the Tahsil Pathalgaon has been excluded from Raigarh district and has been included in Jashpur district, the defendants want to incorporate this amendment.

(14) In the opinion of this Court, the trial Court committed an error of law by dismissing such an application which prays for amendment questioning the territorial jurisdiction of the trial Court on a subsequent event of formation of new civil district on the ground of not arising any cause of action in Pathalgaon. In fact, it is a disputed question of fact which can only be decided after framing an issue on the point and after giving due opportunity of leading evidence to the parties regarding factual aspect of the said cause of action as to whether full or any part thereof has arisen in pathalgaon or not. The impugned order 26.8.2004, is not sustainable in the eyes of law.

(15) In the result, the petition is partly allowed. The first impugned order dated 24.2.2004 is hereby upheld and the second impugned order dated 26.8.2004 is set aside. The application for amendment of the written statement is allowed. Necessary amendment shall be incorporated within a period of 4 weeks from today. There shall be no orders as to costs.

Sd/-
Sunil Kumar Sinha
Judge

/RAO/